

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

BRUCE EARL WARD,

PETITIONER

5:03-CV-00201 JMM

RAY HOBBS, Director of the
Arkansas Department of Correction

RESPONDENT

ORDER

Before the Court are Petitioner's Motion for Leave to File Document *Ex Parte* and Under Seal (Docket # 147), and Respondent's Motion to Strike *Ex Parte* Motion and Order for Appointment of Counsel (Docket # 149). Responses have been filed. Petitioner seeks to file an *ex parte* motion for expert services concerning the investigation of a potential incompetency to be executed claim. Respondent argues that the motion is untimely as no execution date has been set. Respondent also seeks to strike a previously sealed motion requesting appointment of counsel (Docket # 131) and the sealed order granting the request (Docket # 132), arguing that 18 U.S.C. § 3599 does not permit *ex parte* appointments of counsel. (Docket # 149).

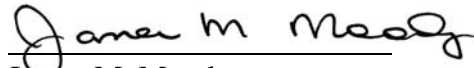
Respondent's Motion to Strike the Sealed Motion to Appoint Counsel and the Court's Order (Docket # 149) is **DENIED**. Petitioner's *ex parte* motion amounted to little more than a motion for clarification and notice of appearance. Petitioner's counsel, Joseph W. Luby¹, had previously been appointed to represent Petitioner during his habeas corpus proceedings. 18 U.S.C. § 3599(e) clearly sets out that appointed counsel will continue representation "throughout every subsequent stage of available judicial proceedings, including... all available post-conviction process, together with applications for stays of execution and other appropriate motions and

¹The Federal Public Defender was also reappointed as counsel (Docket # 135).

procedures, and shall also represent the [petitioner] in such competency proceedings and proceedings for executive or other clemency as may be available to the [petitioner].” Petitioner’s motion for appointment of counsel was unnecessary as his previous appointment was continuing in this matter; the Court’s order merely affirmed that the appointment continued to include the current issues. Jennifer Merrigan, an associate in Mr. Luby’s firm, was also appointed by the Court.

In light of the subject matter of Petitioner’s request for expert services, the Motion for Leave to File Document *Ex Parte* and Under Seal (Docket # 147) is **GRANTED**. Although an execution date has not been set, it may very well be that expert services are warranted at this time, as investigating competency to be executed issues may take some time. To allow for this case to proceed expeditiously, it may be reasonable for a suspected competency issue to be investigated prior to the setting of an execution date.

IT IS SO ORDERED this 8th day of August, 2011.


James M. Moody
United States District Judge